



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 232

[Docket DARS-2016-0009]

RIN 0750-AI90

Defense Federal Acquisition Regulation Supplement: Contract Financing (DFARS Case 2015-D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) regarding the use of customary contract financing, other than loan guarantees and advance payments, on certain fixed-price contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2015-D026, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D026" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D026." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D026" on your attached document.

- o Email: osd.dfars@mail.mil. Include DFARS Case 2015-D026 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571-372-6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS regarding the use of customary contract financing, other than loan guarantees and advance payments identified in FAR part 32, on fixed-price

contracts with a period of performance in excess of one year that meet the dollar thresholds established in FAR 32.104(d). DoD has determined that the use of such customary contract financing provides improved cash flow as an incentive for commercial companies to do business with DoD, is in DoD's best interest, and requires no further justification of its use.

II. Discussion and Analysis

The proposed rule amends DFARS 232.104 to state that DoD has made the determination that the use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD's best interest, and further justification of its use is unnecessary on fixed-price contracts that meet the dollar thresholds established in FAR 32.104(d), with a period of performance in excess of a year, and in solicitations expected to result in such contracts.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to state that DoD has made the determination that the use of customary contract financing (see Federal Acquisition Regulation (FAR) 32.113), other than loan guarantees and advance payments, is in DoD's best interest, and further justification of its use is unnecessary on fixed-price contracts that meet the dollar thresholds established in FAR 32.104(d), with a period of performance in excess of a year, and in solicitations expected to result in such contracts.

The objective of the proposed rule is to clarify that the use of certain customary contract financing does not require further justification, as it has been determined to be in DoD's best

interest, and the use of the specified contract financing is an incentive for commercial companies to do business with DoD.

This rule will apply to DoD contractors, including small entities, where a fixed-price contract with a period of performance in excess of one year and meeting the thresholds in FAR 32.104(d) is contemplated.

There is no change to reporting or recordkeeping as a result of this rule. This rule changes processes that are internal to the Government and does not have any impact on small entities for reporting or recordkeeping.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the requirements.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2015-D026), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 232

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 232 is proposed to be amended as follows:

PART 232—CONTRACT FINANCING

1. The authority citation for part 232 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Add section 232.104 to subpart 232.1 to read as follows:

232.104 Providing contract financing.

For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DoD has determined that—

(1) The use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD's best interest; and

(2) Further justification of its use in individual acquisitions is unnecessary.

[FR Doc. 2016-15246 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]